

To the FCC
In the matter of

2002 Biennial Review -
Review of the FCC's Broadcast
Ownership Rules, and other rules
Pursuant to Section 202 of the
Telecommunications Act of 1996
MB Docket 02-277
Consolidating MM Dockets
01-235, 01-317, 00-244)

To: The Commission

Further Comments of Thomas Desmond
On Notice of Proposed Rulemaking

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The following comments are in addition to my previous comments, which were filed in response to the NAB's comments on January 13, 2003. I am submitting these additional comments based on preliminary indications of what is likely to be included in the FCC's June 2 rulemaking.

Increasing the television station ownership cap from 35% to 45% is a mistake unless other regulations are also modified.

Specifically, it should be noted that with the 50% UHF discount, this increase in the ownership cap would allow one entity to own television stations potentially covering 90% of the country. And, since only one station in a duopoly is counted towards the cap these rules would actually allow one entity to own two television stations in the majority of the country - as long as the stations in question are UHF stations.

This seriously distorts the intent of a 45% national cap, which should be to ensure that one entity couldn't control television broadcast outlets covering the overwhelming majority of the country.

In short, if the ownership cap is raised, the following actions are required in order to avoid excessive ownership concentration:

1. The outdated UHF discount needs to be eliminated. The 45% limit should be absolute - regardless of whether the stations owned by an entity are on the UHF or VHF bands.
2. Each station in a duopoly should be counted separately towards the 45% cap - in other words, an entity should have to choose between covering 45% of the country with a single station in each market, versus having additional stations in some markets, but covering less of the country.

Triopolies should not be allowed in any size of television market

This is an experiment that the FCC should not undertake until we've had more time to study the effects of duopolies on the television market place. There just is not sufficient information at this point to make a decision to allow triopolies.

Television ownership should continue to count against radio station limits within the same market

Under the proposed rules, one company could potentially own 8 radio stations, 2 television stations, and the only local newspaper in a local market. This represents a dramatic increase in potential media ownership concentration with local markets - and one that cannot be justified by any current research. It is far safer to continue counting television stations against the radio ownership limits in order to allow more time to research and consider this issue.

Radio ownership limits should not be increased above the eight currently allowed for any size of market

Proposals to increase the radio ownership limit above eight should be rejected. Arguments that have been made that the largest markets have sixty or more radio stations, and that more consolidation would not be harmful since these markets are so competitive. Unfortunately, this argument is not accurate - while some markets may have more than sixty radio signals, typically only a portion of those signals are actually competitive across the entire marketplace. And since the large companies that own multiple stations seem typically to buy the strongest signals, these companies already hold a much higher concentration of power than just counting the number of radio signals might indicate.

For example, here in Dallas-Fort Worth, only sixteen of the commercial FM stations are capable of covering the entire metropolitan area out of a total of more than 30 total commercial FM signals. A loosening of the ownership rules could potentially allow all of those sixteen full coverage FM signals to be owned by two companies - while the "independent voices" in the market place are limited to weak daytime AM stations or to FM rimshots that only cover a small part of the market. This must not be allowed.

Any change in the market definition applied to radio station ownership rules should apply to existing clusters

Grandfathering existing clusters if these rules are changed is bad policy for the following reasons:

1. It means that whoever owns the existing clustered that is grandfathered under the old rules has a substantial competitive advantage against new entrants who would be forced to play by the new more restrictive rules. This could make it virtually impossible to compete against the entrenched (and grandfathered) clusters that are now in place.
2. It is bad policy to allow one company to own all or most of the radio stations in a smaller market - period. The fact that some of these clusters may now exist in places like Minot, ND doesn't somehow make it okay to leave those clusters in place in those markets, thereby depriving those listeners of the benefits associated with a competitive radio marketplace.

There certainly is substantial precedent for the government to break up excessive concentrations of power - and, in fact, this has been done several times in communications policy. The famous example in the broadcasting industry is from the forties, when the FCC ordered RCA to divest one of its radio networks, creating what is now the American Broadcasting Company. There is no valid reason why forced divestitures (with a reasonable timeframe for compliance) should not be required in a handful of markets today.

Respectfully submitted,

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May 27, 2003